

## **REMARKS**

In the Office Action mailed by the United States Patent and Trademark Office on May 5, 2009, claim 27 was objected to under 37 C.F.R. 1.75(c) as being of improper dependent form and claims 1, 7, 8, 11, 12, 22 and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,224,888 ("Vatter") in view of W.O. 01/15537 ("Wadsworth") and U.S. 6,402,408 ("Ferrari"). Accordingly, Applicant respectfully provides the following:

### **Claim Objections**

Claim 27 was objected to under 37 C.F.R. 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Macadamia seed oil and shea butter have been deleted as limitations from claim 27. Additionally, repetitive limitations for propylparaben, methylparaben, cetyl alcohol, tocopheryl acetate, and menthol have been deleted from claim 27. Accordingly, Applicant requests that the objections to claim 27 be withdrawn at this time.

### **Rejections under 35 U.S.C. 103**

Claims 1, 7, 8, 11, 12, 22 and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,224,888 ("Vatter") in view of W.O. 01/15537 ("Wadsworth") and U.S. 6,402,408 ("Ferrari"). Attached herewith, please find a petition to accept an unintentionally delayed benefit claim, with reference to the prior application and a statement that the entire delay between the date the claim was due and the date the claim was filed was unintentional. Applicant requests that the present application be afforded the benefit of the filing date of the prior-filed applications referenced in the first paragraph of this pending application. Afforded the priority date of the applications referenced in the first paragraph of this application, the present

application claims a priority date of December 5, 2000. Wadsworth was published March 8,

2001. 35 USC § 103 (c) (1) provides that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Because the priority date of the present application stands in time before the publication date of Wadsworth, Wadsworth qualifies as prior art only under 102 (e). Wadsworth and the present application were, at the time the claimed invention was made, subject to an obligation of assignment to the same person. Accordingly, Wadsworth may not be utilized as art which precludes the patentability of the present application under 35 USC § 103, and Applicant respectfully requests that all rejections over Wadsworth be withdrawn at this time.


## CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

Dated this 4 day of August, 2009.

Respectfully submitted,

KIRTON & McCONKIE

  
Michael F. Krieger  
Reg. No. 35,232

Kirton & McConkie  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 321-4814  
Fax: (801) 321-4893

JRM/brc